

E-Filed 10/19/15

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JOSEPH VICTOR LAGANA,

No. C 15-4047 RS (PR)

Petitioner,

ORDER OF DISMISSAL

v.

GREG MUNKS,

Respondent.

Petitioner has failed to comply with the Court's order to (1) file a complete application to proceed *in forma pauperis* ("IFP"), or (2) pay the filing fee of \$5.00. His application lacks two necessary documents: a Certificate of Funds signed by an authorized prison officer (the one submitted was not signed), and a prison trust fund account statement showing transactions for the last six months. Accordingly, this habeas action is DISMISSED without prejudice for failure to respond to the Court's order and for failure to prosecute under Federal Rule of Civil Procedure 41(b). Because this dismissal is without prejudice, petitioner may move to reopen the action. Any motion to reopen **must** contain (1) a properly completed IFP application, which contains the two documents listed above, **or** (2) full payment for the filing fee. His IFP application (Docket No. 5) is DENIED as insufficient.

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1 The Clerk shall amend the docket to reflect that Greg Munks, the Sheriff of San Mateo
2 County and head of the jail in which petitioner is housed, is the sole respondent in this action.
3 Petitioner erroneously named other persons as respondents. Munks is the sole proper
4 respondent in this action, as he is the custodian having day-to-day control over petitioner, the
5 only person who can produce “the body” of the petitioner. *Brittingham v. United States*, 982
6 F.2d 378, 379 (9th Cir. 1992) (quoting *Guerra v. Meese*, 786 F.2d 414, 416 (D.C. Cir.
7 1986)). The Clerk shall terminate Docket No. 5, enter judgment in favor of respondent and
8 close the file.

9 **IT IS SO ORDERED.**

10 DATED: October 19, 2015


RICHARD SEEBORG
United States District Judge

United States District Court
For the Northern District of California